

FCC 03-2828

Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 13 2003  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MB Docket No. 03-195  
FM Table of Allotments, ) RM-10745  
FM Broadcast Stations. )  
(Marble Falls and Dripping Springs, Texas)<sup>1</sup> )

**NOTICE OF PROPOSED RULEMAKING****Adopted: September 3, 2003****Released: September 8, 2003****Comments Date: October 30, 2003****Reply comments Date: November 14, 2003**

By the Assistant Chief, Audio Division

1 The Audio Division has before it a petition for rule making filed by Amigo Radio, Ltd ("Amigo"), licensee of Station KXXS, Marble Falls, Texas. Amigo requests the substitution of Channel 285A for Channel 285C2 at Marble Falls, Texas, reallocation of Channel 285A to Dripping Springs, Texas, and the modification of the authorization for Station KXXS to reflect the changes.<sup>2</sup> Amigo stated its intention to file an application for Channel 285A at Dripping Springs, Texas.

2. Amigo filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>3</sup> In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.<sup>4</sup>

3 In support of the petition, Amigo states that Channel 285A can be allotted to Dripping Springs, Texas, in compliance with Section 73.207 of the Commission's Rules. Amigo further states that Dripping Springs is an incorporated community governed by an elected mayor and city council. Dripping Springs has its own public library, post office and the Dripping Springs Independent School District consists of four schools with an enrollment of 3,090 students. Dripping Springs has a base of businesses,

<sup>1</sup> On August 4, 2003, a CFR correction was published in the *Federal Register* correcting the FM Table of Allotments under Texas listing the community of Marble Falls and Channel 285C2. See 68 FR 45786, August 4, 2003.

<sup>2</sup> In MM Docket No. 95-49 Maxagrid Broadcasting Corp requested and was granted a channel substitution from 284C3 to 285C3 and a change of community from Llano, Texas, to Marble Falls, Texas, for Station KBAE. See 12 FCC Rcd 6809 (M.M. 1997). Station KBAE was upgraded from Channel 285C3 to Channel 285C2 in MM Docket No. 97-174. See 14 FCC Rcd 6449 (M.M. 1999).

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a new Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>4</sup> The FM Allotment priorities are (1) First full-time aural service (2) Second full-time aural service (3) First local service (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

churches, community and civic groups and two weekly newspapers are published in the community. Amigo submits that Dripping Springs, Texas, is a community for allotment purposes. Amigo states that its proposal will provide a first local service for Dripping Springs while Marble Falls will not be deprived of its sole aural transmission service. According to Amigo, Dripping Springs is wholly outside of the Austin Urbanized Area with the proposed reallocation of Channel 285A resulting in 70 dBu service to approximately six percent of the Austin Urbanized Area. Amigo provided a showing that from its new transmitter site, Station KXXS will have a gain area of 460 square kilometers encompassing 113,001 people and a loss area of 6,510 square kilometers encompassing 332,262 people, with the gain and loss areas continuing to receive service from at least five aural stations.

4 We believe that the proposal warrants consideration since the reallocation could provide Dripping Springs with its first local aural transmission service. An engineering analysis shows that Channel 285A can be allotted to Dripping Springs in compliance with the Commission's spacing requirements at coordinates 30-11-54 and 98-00-46. Amigo's proposed site is 7.5 kilometers (4.6 miles) east of the community of Dripping Springs. Marble Falls will continue to receive local service from non-commercial educational Station KBMD, Channel 203A, which provides a 70 dBu signal to the community. Our analysis indicates that the loss area of Channel 285C2 at Marble Falls contains 333,744 people in an area of 6,508 square kilometers while the gain area for Channel 285A at Dripping Springs contains 107,518 people in an area of 459 square kilometers. This will produce a net loss of 226,226 people in an area of 6,049 square kilometers. The 2000 U.S. Census reveals a population of 4,959 people for Marble Falls and 1,548 people for Dripping Springs. The reallocation of Channel 285A to Dripping Springs falls under priority 3), first local service, while retention of Channel 285C2 at Marble Falls is considered under priority 4), other public service. Although the provision of a first local service is a higher priority, Amigo is requested to provide additional information supporting the reallocation since there is a large loss of population served and Station KXXS is moving from the larger community of Marble Falls to the smaller community of Dripping Springs. As requested, we shall propose to modify the license for Station KXXS to specify operation on Channel 285A at Dripping Springs, Texas, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 285A at Dripping Springs. Since Dripping Springs is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment of Channel 285A at Dripping Springs.

5 Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Dripping Springs, Texas	----		285A
Marble Falls, Texas	285C2		----

6 Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before October 30, 2003, and reply comments on or before November 14, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Amigo's counsel, as follows:

Robert B. Jacobi  
Richard A. Helmick  
Cohn and Marks LLP  
1920 N Street, N.W., Suite 300  
Washington, D.C. 2003

8. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>5</sup>

10. For further information concerning this proceeding, contact Kathleen Scheuerle, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any

---

<sup>5</sup> See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment Appendix

## APPENDIX

1 Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached

2 Showings Required Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3 Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved

4 Comments and Reply Comments, Service Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554

5 Number of Copies In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6 Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.